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Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Bell Operating Companies)
)
Petitions for Forbearance from the)
Application of Section 272 of the)
Communications Act of 1934, As)
Amended, to Certain Activities)

CC Docket No. 96-149

**BELLSOUTH REPLY TO COMMENTS
ON ITS PETITION FOR RECONSIDERATION**

BellSouth Corporation, on behalf of BellSouth Telecommunications, Inc. ("BellSouth"), hereby responds to comments on its request for limited reconsideration¹ of the Common Carrier Bureau's *Forbearance Order*² in the above referenced proceeding. In the *Forbearance Order*, the Bureau granted the respective petitions of BellSouth and other Bell operating companies ("BOCs") pursuant to Section 10³ of the Act⁴ for forbearance from the application of the separate affiliate requirements of Section 272⁵ to the BOCs' E911 services and to BellSouth's reverse

¹ BellSouth Petition for Reconsideration, CC Docket No. 96-149 (filed April 2, 1998).

² *Bell Operating Companies -- Petitions for Forbearance from the Application of Section 272 of the Communications Act of 1934, As Amended, to Certain Activities*, CC Docket No. 96-149, Memorandum Opinion and Order, DA 98-220 (released February 6, 1998), *errata* (released March 3, 1998) ("*Forbearance Order*").

³ 47 U.S.C. § 160.

⁴ The Communications Act of 1934, as amended, 47 U.S.C. §§ 151 *et seq.* ("the Act").

⁵ 47 U.S.C. § 272.

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search directory assistance services. In doing so, however, the Bureau imposed certain conditions on the relief granted.⁶

In its Petition, BellSouth requested reconsideration of certain aspects of those conditions. BellSouth showed that the Bureau erroneously imposed the conditions on the basis of an “unqualified nondiscrimination” standard as if the E911 and reverse search services were being offered through a separate affiliate meeting the conditions of Section 272. Instead, in forbearing from enforcement of that section pursuant to its authority under Section 10, the Bureau should have applied an “unjust and unreasonable” discrimination standard as required by that section. BellSouth further showed that under the appropriate “unjust or unreasonable” discrimination standard required by Section 10, the conditions imposed in the *Order* are not warranted.

In its Petition, BellSouth tracked the Bureau’s language in the *Order* professing to apply the appropriate Section 10 standard, but showed that the Bureau conceded that it had “*effectively impose[d]* the nondiscrimination safeguards contained in section 272(c)(1).”⁷ Thus, the Bureaus’ *Order* “effectively impose[d]” the nondiscrimination standard of Section 272,

⁶ The Bureau required the BOCs to make available to nonaffiliated E911 service providers all customer listing information that the BOCs use to provide E911 services at the same rates, terms, and conditions the BOCs impose on their own E911 operations. The Bureau similarly required BellSouth to make available to nonaffiliated directory assistance providers all directory listings that BellSouth uses in its reverse search services at the same rates, terms, and conditions it imposes on its own reverse directory operations. Additionally, the Bureau required the BOCs to make necessary changes to their cost allocation manuals to accommodate the Bureau’s determination that BOCs’ E911 services and BellSouth’s reverse search services should be treated as nonregulated activities.

⁷ Petition at 4 (quoting *Forbearance Order* at ¶ 39 (addressing conditions imposed on E911 offerings) (emphasis added)); see also Petition at 4 (quoting *Forbearance Order* at ¶ 83 (“[W]e conclude . . . that we should forbear from application of section 272 to BellSouth’s interLATA reverse directory services, yet *effectively impose the non-discrimination safeguards contained in section 272(c)(1)’s non-discrimination safeguards* through appropriate conditions.”) (emphasis added)).

notwithstanding the purported forbearance from applying that section and notwithstanding the express “unjust or unreasonable” standard mandated by Congress in Section 10.

SBC made the same point in supporting BellSouth’s Petition.⁸ As SBC observed,

While the Bureau did state that its task was to consider whether a BOC’s practice is unjustly or unreasonably discriminatory under the section 10 standard, it in fact did not consider what *minimum* conditions are necessary to avoid unjust or unreasonable discrimination; instead it simply concluded that the “unqualified” nondiscrimination standard of section 272(c)(1), a much more stringent standard than an unjust or unreasonable standard, should be imposed.⁹

The effect of the Bureau’s *Order*, as SBC concurs, is that “the two nondiscrimination standards [were made] synonymous” in direct contravention of the Commission’s prior determination that the Section 272 standard is *not* synonymous with the “unjust and unreasonable” standard in other sections of the Act.¹⁰

Only AT&T and MCI attempt to defend the Bureau’s decision. Rather than justifying the Bureau’s errant analysis, however, these parties merely repeat it.

For example, AT&T spends the bulk of its pleading arguing its assertion that BellSouth’s Petition “omit[ted] any reference” to the Bureau’s language professing to apply the Section 10 standard and then restating the Bureau’s discussion of that section.¹¹ AT&T’s assertion is both untrue and immaterial.

⁸ SBC Comments at 1-3.

⁹ SBC Comments at 2 (emphasis in original; citations omitted).

¹⁰ See SBC Comments at 2 (citing *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, 11 FCC Rcd 21905, ¶ 197 (1996)).

¹¹ AT&T Comments at 2, 2-6.

As BellSouth expressly observed in its Petition.

[T]he Bureau's analyses . . . began properly with the recognition that the respective carriers' practices were to be measured against the "unjust or unreasonable" standard of Section 10(a), rather than the "unqualified prohibition" standard of Section 272. For example, after expressly observing that the Commission previously had determined that Section 272(c)(1) "establishes an unqualified prohibition against discrimination buy a BOC in its dealings with its section 272 affiliate and other entities," the Bureau described its task in analyzing the E911 petitions as being to "consider . . . whether [a] practice [that may be deemed discriminatory under the Section 272 standard] would be unjustly or unreasonably discriminatory within the meaning of section 10(a)(1)." The Bureau made similar prefatory remarks regarding its analysis of BellSouth's reverse search services.¹²

Thus, BellSouth does not dispute that the Bureau, in various passages of its *Order*, claims to have applied the Section 10 standard in its analysis. What BellSouth showed, however, is that – notwithstanding these claims – other passages of the *Order* reveal that the Bureau in fact effectively applied the Section 272 standard.¹³

Neither AT&T nor MCI effectively refutes BellSouth's contention. AT&T suggests that the passages from *Order* in which the Bureau acknowledges that it "effectively impose[d]" Section 272 safeguards do not undermine the Bureau's claims to have been applying Section 10 because those passages arose in the context of the Bureau's "rejection" of MCI's request that

¹² Petition at 3-4 (citations omitted).

¹³ AT&T's claim that BellSouth's Petition "offers no arguments that were not previously considered," AT&T Comments at 2, is similarly erroneous. BellSouth and others argued initially that the Commission should not apply the Section 272 standard; AT&T and others argued that the Commission should apply that standard. Here, BellSouth is asserting that the Bureau did in effect apply that standard notwithstanding its representations that it was not doing so. BellSouth could not have anticipated and argued against such a result prior to seeing the Bureau's decision; hence, BellSouth's arguments in the instant Petition are not repetitive of arguments made previously.

Section 272 be applied.¹⁴ This argument simply highlights the fallacy of the Bureau's decision: the Bureau cannot claim to reject a standard and at the same time effectively impose conditions to meet that standard.

MCI similarly is confused by the difference between what the Bureau said it was doing and what it actually did. Indeed, in defending the result, MCI reiterates its position that "the BOCs should only be permitted to offer these services on an unseparated basis if they are required, as a condition of such forbearance, to provide the same subscriber listing information to unaffiliated entities that they would provide to their E911 and reverse directory operations if those services were offered through the separate affiliate required by Section 272."¹⁵ In continuing to contend that forbearance should be conditioned upon safeguards "required by Section 272," MCI continues to promote the obliteration of the distinction between the nondiscrimination standard of that section and the standard of Section 10.

MCI and AT&T also assert that, notwithstanding the apparent equalization of the Section 10 and Section 272 nondiscrimination standards in the *Order*, there is no error in the Bureau's analysis because the same result would be driven by either nondiscrimination standard. All this argument does, however, is confirm that, at best, it is not possible to discern from the *Order* exactly *what* standard the Bureau applied.

Moreover, attempts to equate the BOCs' obligations under either standard fall flat. For example, MCI finds it hard to imagine "nondiscrimination safeguards, short of the requirements of Section 272(c)(1), that would prevent . . . unjust or unreasonable discrimination."¹⁶ Yet,

¹⁴ AT&T Comments at 5.

¹⁵ MCI Comments at 4.

¹⁶ MCI Comments at 8.

AT&T's suggestion that all that is required by the *Order* is that a BOC provide a "copy of the listing information databases"¹⁷ presents an appropriate example. The burden of providing a "copy" is materially different from the burden of providing direct third party access to the database itself. The former may be satisfactory under a "unjust or unreasonable" standard while the latter – which BellSouth understands from discussions with Bureau staff to be the Bureau's expectations following the *Order* – is more akin to an obligation under an "unqualified" nondiscrimination standard.

Similarly, both AT&T and MCI fail to address how a nondiscrimination obligation meets the "just and reasonable" test when it compels BellSouth to require carriers who want to control the dissemination of their customers' listings to choose between relinquishing such control or not having their customers' listings accessible through BellSouth's reverse search services. MCI, in particular, seems to conclude that there only one outcome possible, and that is to hold BellSouth to such an absolute standard. As BellSouth showed, however, the Bureau should reconsider its decision and conclude that it is not unjust or unreasonable for BellSouth to honor such wishes of other carriers.¹⁸

¹⁷ AT&T Comments at 8.


¹⁸ Pursuant to the *Forbearance Order*, BellSouth has blocked from its reverse search directory services the listings of all customers of other carriers who have authorized BellSouth to so use such listings but have denied BellSouth the authority to share these listings with third parties. BellSouth understands these carriers' concerns to be that MCI and others are merely seeking to get indirectly and for free the listing information that MCI and others have demanded these carriers give them, and that these carriers have refused to give, directly at no charge. Although this dispute is between MCI and the other carriers, the resultant nondiscrimination obligation interferes with BellSouth's contractual relationships, as well as with its abilities to provide services to or for other carriers.

CONCLUSION

For the reasons set forth in its Petition and herein, BellSouth urges the Bureau to reconsider its *Forbearance Order* under the appropriate "unjust or unreasonable" nondiscrimination standard established in Section 10 of the Act and modify the *Order* accordingly.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that I have this 27th day of May, 1998, served all parties to this action with a copy of the foregoing REPLY COMMENTS by placing a true and correct copy of same in the United States Mail, postage prepaid, addressed to the parties listed below:

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